

Civil Liability

What are the potential gaps in liability protection for individual volunteers?

The Good Samaritan Law may not apply to health care professionals or employees trained in health care if the emergency care they provide is compensated and within the scope of their usual and customary employment.

Wisconsin citizens that volunteer across state lines may not be protected from civil liability. The Emergency Management Assistance Compact (EMAC) provides a system for states to request assistance from other states when a disaster occurs. EMAC provides protection for state employees that are authorized by the state emergency management office to assist the requesting state. Volunteers are not protected through EMAC unless additional steps are taken to incorporate them into the state government's response.

Volunteers that self-deploy may not be protected from civil liability unless they are rendering emergency care at the scene of the emergency and they are acting in good faith. In *Mueller v. McMillian Warner Insurance Co.*, the Wisconsin Supreme Court defined emergency care (as it relates to Wis. Stat. § 895.48 (1)) as care rendered by a layperson in a sudden, unexpected happening, occurrence, or situation that demands immediate action until professional medical attention is available. In *Mueller*, the Court concluded that the Good Samaritan statute protects volunteers as long as they are providing emergency care; but, once the emergency care has been provided, the volunteer must transfer the injured person to professional medical personnel in order to be exempt from liability under the Good Samaritan statute.

What federal law provides volunteers with immunity from civil liability when responding to an emergency?

The Federal Volunteer Protection Act of 1997 (42 U.S.C. 14051 et seq.) provides civil immunity for volunteers serving nonprofit organizations or government entities. The Volunteer Protection Act preempts inconsistent state law except when such law provides additional protections. The volunteer is exempt from liability under all of the following conditions:

- 1) He or she was acting within the scope of his or her responsibilities at the time;
- 2) Her or she was properly licensed or otherwise authorized for the activities or practice in the State in which the harm occurred;
- 3) The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed; and
- 4) The volunteer was not operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or owner to possess an operator's license or maintain insurance.

What state law provides volunteers with immunity from civil liability when responding to a man-made or natural disaster?

In the event of a disaster, Wisconsin law (Wis. Stat. § 166.03 (10)) provides additional civil liability protection for volunteers. The statute states that no person who provides equipment, materials, facilities, labor, or services is liable for death or injury or any damage to property under all of the following conditions:

He or she is under the direction of the governor; the adjutant general; the governing body, chief or acting chief executive official, or head of emergency management services of any county, town, municipality, or tribe; DHFS (if it is the lead agency) or a local health department (if DHFS is the lead agency and it is acting as an agent of DHFS);

His or her actions are in response to enemy action, a natural or man-made disaster, a federally declared state of emergency, or a state declared state of emergency; and

His or her conduct or omission was not reckless, wanton, or intentional misconduct.

What state law provides volunteers with immunity from civil liability when responding to an emergency?

The Good Samaritan Law (Wis. Stat. § 895.48 (1)) provides civil liability immunity to a person who renders "emergency care" at the scene of an emergency in good faith. The law does not cover reckless, wanton, or intentional misconduct. Generally, the law does not apply to employees trained in healthcare or healthcare professionals if emergency care is rendered for compensation and within the scope of their usual customary employment.